

**UNDERHILL WASTEWATER ORDINANCE, AS AMENDED
UNDERHILL, VERMONT**

**Adopted by the Underhill Selectboard
April 22, 1992**

**Amended
April 2, 1997**


Further amended by the Underhill Selectboard December 1, 2005

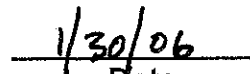

Marc Maheux, Chair


Stanton Hamlet


Stephen Walkerman

Approved by the Vermont Department of Environmental Conservation and made effective:


Representative


Date

UNDERHILL WASTEWATER DISPOSAL ORDINANCE

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I. PURPOSE

This ordinance is adopted under V.S.A. Title 24, Chapter 102 (On-Site Wastewater Systems). The purpose of this ordinance is to preserve the public health and prevent pollution and to secure the sanitary protection of waters. This ordinance is intended to ensure that wastewater is discharged into an approved wastewater treatment system and to accomplish the following:

- a. Prevent the creation of health hazards which include, but are not limited to surfacing wastewater; contaminated drinking water, groundwater, and surface water;
- b. Insure adequate drainage related to the proper function of wastewater disposal;
- c. Insure that facilities are designed, constructed, operated, and maintained in a manner which will promote sanitary and healthful conditions;
- d. Insure compliance with local regulations regarding the protection of the public health, safety and welfare.

I. DEFINITIONS:

In addition to the definitions found in the 2005 Vermont Agency of Natural Resources Wastewater System and Potable Water Supply rules attached as Appendix A, the following definitions apply:

Consultant: Means a state- licensed designer or engineer. See Appendix A, "Designer."

Fixture: Means a toilet, faucet, showerhead, sink, tub or shower.

Primitive Camp: Means a camp on its own individual lot with no interior plumbing consisting of more than a sink with water that is used for no more than three (3) consecutive weeks per year and no more than a total of sixty (60) days per year.

Residence: Means any dwelling used for habitation for more than three consecutive weeks or sixty days per year. This includes a seasonal camp.

Seasonal Camp: A structure or dwelling used for seasonal occupancy only. Seasonal occupancy shall be considered to be no more than 182 days for each calendar year.

Wastewater Permit Officer: ("Permit Officer") Means any person or their agent appointed by the Selectboard to enforce the regulations of this Wastewater Ordinance. (Formerly, "Sewage Officer") When referring to the definitions in "Appendix A" wherein a definition requires a determination to be made by the Secretary, for the purposes of Town of Underhill permitting, that determination will be made by the Permit Officer.

III. APPLICABILITY OF ORDINANCE:

- a. This Ordinance incorporates by reference the latest update to the technical and administrative requirements of the State of Vermont Agency of Natural Resources 2005 Wastewater System and Potable Water Supply Rules. ("the Rules") If any portion of this Ordinance conflicts with the Rules the Rules shall govern.¹
- b. All systems shall receive a Town of Underhill Wastewater Disposal Permit, ("Wastewater Permit") and if required under the Rules, a State Wastewater Permit, prior to the commencement of construction. All wastewater disposal systems shall be built, altered or repaired, and used in accord with this ordinance.

IV. PERMITTING PROCEDURES

Any septic system (new, replacement or repair) must be designed by a licensed designer or engineer ("the Consultant"). Please make sure the Consultant is familiar with the Underhill Wastewater Ordinance. The following procedure must be followed in order for a septic permit to issue:

- a. Contact the Wastewater Permit Officer: Whether installing a new system, replacing a failed system, or making a minor repair to an existing system, the first step is to contact the Town Wastewater Permit Officer. The Permit Officer can give you information about who to call at Vermont Agency of Natural Resources to determine if a state wastewater permit is needed. The Permit Officer can also supply the applicant with a list of consultants who can design the new/replacement/ system or help determine what kind of minor repair is needed. The applicant or consultant must notify the town Permit Officer prior to beginning any on-site investigation (test pits). A minimum 48 hour notification is required prior to scheduling any on-site investigation. Failure to notify the Town in a timely fashion so that the Permit Officer can conduct an on-site investigation with the consultant may result in re-excavation or non-approval of the septic design and a permit may be denied. After the on-site investigation, the consultant will design a septic plan for submission to the Town.
- b. Apply for a Septic Permit: The applicant shall submit an application for a Wastewater Permit, along with technical information and the appropriate fees to the Wastewater Permit Officer. Technical information shall contain soil and site information and a detailed design of the proposed primary and replacement disposal systems as required by the Rules. Wells must be properly isolated from septic systems, in accordance with the Rules. The application shall be reviewed and approved by the Permit Officer prior to construction of the system. Once the application is approved, the septic system may be installed. The approved septic application shall be recorded in the Town of Underhill Land Records.

¹ Applicants and Consultants should be aware that the fifty-foot isolation distance for septic systems from watercourses found in the Rules is currently superseded by the more stringent Underhill Zoning Regulation requirement of a 100 foot setback for septic systems from watercourses. Underhill Zoning Regulations §III(V)(1).

- c. Have the System Inspected and Certified: The Wastewater Permit Officer may inspect systems at different stages during installation. The Consultant must stake out the disposal site before construction, and off-set stakes must be held in place during construction and until final inspection. All systems shall have a final inspection before they are covered with soil. A minimum 48 hour notification is required prior to scheduling any final inspection. Failure to notify the Town in a timely fashion so that the Permit Officer can conduct a final inspection with the consultant will result in the system not being certified.

Once the system has been inspected and found to be in compliance with the septic plan, the Consultant shall send a Letter of Certification to the Wastewater Permit Officer. Upon receipt of the certification letter from the Consultant, the Permit Officer shall issue a Certification of Compliance. The Certification shall be recorded in the Land Records. A copy of the Certificate of Compliance shall also be issued to the property owner.

V. GENERAL REGULATIONS

- a. Minimum Design Standard: The minimum design standard for the size of the wastewater disposal system shall be based on a three- bedroom house or 420 gallons per day.
- b. Existing Wastewater Disposal Systems: Existing wastewater disposal systems in operation at the time of adoption of this ordinance are approved, provided: that such systems do not create a health hazard, nuisance, or pollute surface or groundwater; and were built either in accord with the regulations that were in place at the time of construction or were constructed before Town regulation of wastewater disposal systems.

The Wastewater Permit Officer or Health Officer shall determine if an existing system has failed. If a system has failed, a disposal system shall be installed or upgraded to meet the standards of this ordinance to the extent possible.

- c. Repairs and Alteration: No wastewater disposal system shall be altered, repaired, or re-built in any way until a permit has been issued. When a minor repair or replacement is proposed, the Wastewater Permit Officer may, in writing, waive the Wastewater Disposal Permit requirement on a case-by-case basis. No permit is required to replace a fixture. The Permit Officer shall determine what constitutes a minor repair or replacement.
- d. Change of Use: A change of use may trigger the need for a wastewater disposal permit. Change of use shall include, but is not limited to: the addition of plumbing; the addition of bedrooms; conversion of primitive camps to a seasonal camp or dwelling; conversion of seasonal dwellings to single or multiple-unit residential structures; conversion of single-unit residential structures to multiple-unit or commercial or industrial use. No structure shall be altered in any way so as to change the use of that structure until the

Wastewater Permit Officer is satisfied that the existing wastewater disposal system is adequate for the proposed use or a Wastewater Permit has been issued for the proposed use. The Permit Officer, if in doubt that the standards of this ordinance can be met, may refer the matter to the legislative body for review and recommendations prior to approval.

- e. Site and Test Pit Investigation: All test pits shall be dug by backhoe to a depth of 7 feet or to the limiting factor such as bedrock or groundwater. The minimum number of test pits shall not be less than two (2) for the primary and two for the replacement areas. The Underhill Wastewater Permit Officer shall be present to observe the digging of all test pits unless a state engineer is present for the site investigation. Attendance of the Permit Officer at site investigations when the state engineer is present is at the discretion of the Officer.
- f. Certificate of Compliance: The consultant responsible for the approved wastewater disposal system shall submit a final inspection report to the Wastewater Permit Officer. Such report shall certify that the disposal system has been installed as approved. Any variations from the approved design shall be noted in the report. As-Built drawings of the installed wastewater disposal system if different from the plans submitted shall be required prior to issuance of Certificate of Compliance. The Permit Officer shall issue a Certificate of Compliance when satisfied that the installed wastewater system is in compliance with the approved plans, and all fees due have been paid.

A newly constructed dwelling shall not be occupied until a final inspection of the system has been conducted by the Consultant and, if appropriate, the Permit Officer, and the system has been covered with soil. Existing dwellings which require a replacement system may be occupied provided a Certificate of Compliance is obtained within a reasonable period of time, as determined by the Permit Officer.

- g. Replacement System: Replacement systems require a permit before installation. All replacement systems that have an approved replacement area shall be installed in the approved area in accordance with the original permit issued unless a new location meeting the current standards can be approved. Replacement systems for projects subject to state regulation including those on subdivided lots and multiple-unit dwellings and commercial and industrial structures shall be constructed in accordance with relevant State regulations. An approved State Permit, if required, shall be submitted to the Wastewater Permit Officer prior to commencement of construction of the replacement system.
- h. Commercial and Industrial Structures: All commercial and industrial structures require both a State Water Supply and Wastewater Disposal Permit and a Town of Underhill Wastewater Permit.
- i. Special Permit for Primitive Camps: All primitive camps as herein defined shall require a special permit. This permit shall allow for the use of a composting toilet, an incinerating toilet, or a privy without a wastewater disposal system. Terms and Conditions may be attached to the Permit at the discretion of the Sewage Officer. The

special permit shall be recorded in the Town of Underhill Land Records. Any change of use to a seasonal camp, a building or structure as herein defined shall require Town of Underhill Wastewater Permits.

- j. Water Saving and Composting Toilets and Other Water-Saving Devices: All wastewater generated in a residence using waterless toilets shall be conveyed, treated, and disposed of in the same manner as other wastewater, as provided for in this Ordinance which includes obtaining a Wastewater Permit and Certificate of Compliance.

For residences permitted to use waterless toilets, the leach field for a conventional septic system may be reduced in size by up to 35 percent, provided sufficient area exists to expand the field to full size should conventional toilets be installed, and a full size replacement area is identified and reserved. Mound systems may not be reduced in size.

- k. Fees: Application fees for permits shall be established by the Selectboard. Fees shall include the cost of recording permits and certificates of compliance.
- l. Independent Technical Review: The Permit Officer may require an independent technical review of an application. The applicant shall pay for the reasonable cost of an independent technical review. Fees for technical review must be paid in full before a Certificate of Compliance shall issue. In the event the Town is required to bring legal action to collect the review fee, the Applicant shall be responsible for the Town's reasonable attorney's fees and other costs of collection.
- m. Waiver of Design Standard: The Selectboard may, upon good cause shown, grant a waiver from a provision of this Ordinance, provided that such waiver does not conflict with any of the provisions or requirements of the State of Vermont Agency of Natural Resources 2005 Wastewater System and Potable Water Supply Rules.
- n. Terms and Conditions of the Permit: Within 30 days of the receipt of a complete application by the Wastewater Permit Officer, the Wastewater Permit application shall be granted, denied or referred to the legislative body for decision. The Wastewater Permit Officer shall have access to the site while conducting review of any application and prior to issuance of certificate of compliance.

All permits issued under this ordinance shall be filed in the town land records.

Conditions of construction or use may be made a part of and attached to the Wastewater Permit or the Certificate of Compliance.

All permits run with the land and are binding upon each subsequent owner.

- o. Renewal of Permits: A Wastewater Permit shall become void if the system has not been completed within 2 years of the date of issuance. Submission of plans older than 2 years shall require certification by the Consultant that there have been no changes or alterations to the site or abutting lands which require revision to the design or location

of the system previously approved and the wastewater system design remains in compliance with the requirements of this ordinance. The Permit Officer may request the applicant to submit additional information. Application fees shall be those in place at the time of submission of application.

Permits shall be renewed unless they are found to be based on false, fraudulent or misleading information or the original permit conditions can no longer be met. Permits renewed shall remain in effect for one year from the date of renewal for construction purposes only. Modified proposals may be required to submit a new application. The Wastewater Permit Officer must review all modifications. A Wastewater Permit denied renewal is void. A new application shall be made for a Wastewater Permit. The conditions of the ordinance in effect at the time of application shall apply to this new permit.

p. Revocation of Permit: A Wastewater Permit or a Certificate of Compliance, may be revoked by the Wastewater Permit Officer for any of the following reasons:

- False, fraudulent, or misleading information contained in the permit application.
- Installation of a system that does not comply with the conditions of the permit.
- Alteration of the proposed septic system site or replacement areas including effluent dispersion areas so that the proposed septic system does not comply with this ordinance.
- Information which shows the proposed septic system will not comply with this ordinance, including, but not limited to, insufficient isolation distances to water supplies.
- Failure to comply with this ordinance or any terms or conditions of permits issued under this ordinance.

A written petition for revocation of a Wastewater Permit or Certificate of Compliance shall be addressed to the Permit Officer and shall set forth the name and address of the petitioner, the petitioner's interest in the matter, and a brief statement outlining the basis for revocation of permit. The Selectboard may file a petition and participate in revocation proceedings. The Permit Officer shall notify the permit holder in writing of petition for revocation of permit within 72 hours. Receipt of the petition shall initiate the revocation procedure. The Underhill Selectboard shall hold a hearing within thirty (30) days of the Wastewater Permit Officer receiving a revocation petition. The Selectboard shall render a decision within fifteen days of the conclusion of the hearing. Should the Selectboard decide to revoke a permit or certificate of compliance, the Permit Officer shall give the permit holder written notice of the revocation within 72 hours. All wastewater disposal system work must cease immediately upon notification of revocation of the permit.

q. Enforcement: A person who neglects or refuses to comply with the provision of this Ordinance may be fined not more than \$500 for each offense by the Superior Court. Each day that a violation is continued shall constitute a separate offense (24 V.S.A., §1974). Nothing in this ordinance shall be construed to prevent the local Board of

Health or the Health Officer from carrying out their duties as prescribed in 18 V.S.A., Chapter 11.

VI. APPEALS

Any applicant aggrieved by a decision of the Wastewater Permit Officer may appeal that decision in writing to the Underhill Selectboard within thirty (30) days of such decision. The Selectboard shall hold a hearing within thirty (30) days of such an appeal and shall render a decision within fifteen (15) days after the close of such hearing. Following the hearing, any person aggrieved by the decision may appeal that decision to Superior Court. The administrative process must be exhausted before appeal to Superior Court.

VII. SEVERABILITY

If any portion of this Ordinance is held unconstitutional or invalid by a court of competent jurisdiction, the remainder of this Ordinance shall not be affected.

Approval of any wastewater disposal system design and installation by the granting of a disposal system construction permit and certificate of compliance shall not imply that the approved system will be free from malfunction. Proper maintenance of septic systems is vital to their proper functioning. The provisions of this ordinance shall not create liability on the part of the town, any town official, or employee for the wastewater disposal system.

APPENDIX A

2005 Vermont Agency of Natural Resources Wastewater System and Potable Water Supply Rules Subchapter 2 - Definitions

§1-201

- (a) As used in these Rules, the following terms shall have the specified meaning. If a term is not defined, it shall have its common meaning:
- (1) **Absorption Bed** - means a disposal field that is a shallow excavation in the ground more than 48" wide, lined with crushed stone, that releases wastewater into the soil through perforated distribution lines.
 - (2) **Absorption Trench** - means a disposal field that is a shallow ditch 48" or less in width with vertical sides, lined with crushed stone, that releases wastewater into the soil through perforated distribution lines.
 - (3) **Agency** - means the Agency of Natural Resources.
 - (4) **Applicant** - means the person(s) who owns the land on which a project is located.
 - (5) **Bedrock** - means both solid impervious ledge, and loose, slabby, or weathered rock and shale that are not soil and provide essentially no treatment of sewage effluent.
 - (6) **Bedroom** - means:
 - (A) any room in a residential structure that is at least 80 square feet in area, that is susceptible to present or future use as a private sleeping area, and that has at least:
 - (i) one window;
 - (ii) one closet; and
 - (iii) one interior method of entry and exit, excluding closets and bathrooms, allowing the room to be closed off from the remainder of the residence for privacy; or
 - (B) any room within a building or structure that actually serves primarily as sleeping quarters.
 - (C) On a case by case basis, the Secretary may determine that a room that meets the criteria of subsection (6)(A) of this section shall not be deemed to be a bedroom. When making this determination, the Secretary shall consider the following criteria:
 - (i) whether the room has a history of use as a bedroom;

- (ii) whether the size of the room is similar to other bedrooms in the residential structure or is consistent with room sizes customarily used for bedrooms;
- (iii) whether the room is located within the residential dwelling in an area customarily used for sleeping;
- (iv) whether the room is in fairly close proximity to bathroom facilities;
- (v) whether the room affords a level of privacy customarily expected for a bedroom;
- (vi) whether the room has been, or could be, marketed as a bedroom; and
- (vii) whether there are any other factors which could support a determination that the room is not a bedroom.

Note: In determining the number of bedrooms contained in any residence, it shall be presumed that all residences contain a living room, kitchen, bathroom, and at least one bedroom.

- (7) **Board** - means the Vermont Water Resources Board.
- (8) **Building or Structure** – means a building or structure whose use or useful occupancy requires the construction or modification of a potable water supply or wastewater system.
- (9) **Campground** – means any lot of land containing more than three (3) campsites occupied for vacation or recreational purposes by camping units, such as: tents, yurts, tepees, lean-tos, camping cabins, and recreational vehicles including motor homes, folding camping trailers, conventional travel trailers, fifth wheel travel trailers, truck campers, van campers, and conversion vehicles designed and used for travel, recreation and camping. There shall be no distinction made between non-commercial (no charge, no service) and commercial operations. Note: A mobile home or Park Model recreational vehicle that is used as a residence at a campground is regulated as a building or structure.
- (10) **Campsite** – means an area in a campground that is designed to accommodate camping units, for which design flows will be calculated. Design flows may be different for campsites in campgrounds that are open more than seven (7) months per year. A campsite may rely on water faucets, central toilet facilities, and/or a dumping station or may have individual potable water supply and sewerage connections.
- (11) **Change in Use** – means increasing the number of permitted users/employees, converting to a different type of use such as from a residence to a restaurant or office space, adding bedrooms, and other changes provided that any of the above increases design flow or modify other operational requirements of the potable water supply or wastewater system.

- (12) **Commissioner** - means the Commissioner of the Department or her/his designated representative.
- (13) **Critical Level** - means the elevation of the seasonal high water table that must not be exceeded. Each site has a critical level that must be met in order to allow installation of any soil-based disposal system. The critical level varies when using the prescriptive, enhanced prescriptive, or performance based design approaches. The critical level also varies depending on the type of soil-based disposal system that will be used on the site.
- (14) **Crushed Stone** - means clean, durable stone no smaller than 3/4" or larger than 1-1/2" in diameter.
- (15) **Department** - means the Department of Environmental Conservation.
- (16) **Design Flow** - means the flows, set by section 1-504 of these Rules and Section 2.2 of the Vermont Water Supply Rules, that establish the size of the potable water supply and wastewater system serving a lot, building or structure, or campground.
- (17) **Designer** - means a person who is operating within the scope of his or her license, as specified in section 1-313 of these Rules.
- (18) **Desk Top Hydrogeologic Analysis** - means a hydrogeologic analysis that is based on assumptions about the hydraulic capacity of the soils on a specific site. The hydro geologist will consider the soil properties based on the test pit information and will assign a conservative estimate of the hydraulic conductivity for the soil. Based on this conservative assumption, the hydro geologist will calculate the site's hydraulic capacity without the expense of doing a site specific test.
- (19) **Director** - means the Director of the Division or her/his designated representative.
- (20) **Division** - means the Wastewater Management Division of the Department.
- (21) **Elevation** - means the height of a specified object or geologic feature relative to an established benchmark. The benchmark may be established by the licensed designer, or may be established by others, such as the U.S. Geological Survey datums. When working with plans or maps prepared by others, the related benchmark must be used to interpret those plans or maps.
- (22) **Enhanced Prescriptive Designs** - means those designs for sites with less than 24" of naturally occurring permeable soil above bedrock and the seasonal high water table that can be designed using generally accepted assumptions about the hydraulic capacity of soils on a specific site.
- (23) **Existing Exempt Lot** - means:
- (A) a lot that on March 5, 1973 contained two or more buildings or structures that were used on or before that date as primary single or two family residences, but only to the extent that a subdivision of the lot would create a boundary between two such structures and

thereby place each structure on its own lot, provided the lot was in existence before June 14, 2002;

- (B) two individual lots of less than 10 acres each, subdivided out of the same lot and described by deeds that were recorded between September 18, 1969 and March 5, 1973. The first two lots created can claim exempt status even if the project involved the creation of more than two lots. When the order of creation cannot be determined from the records, the Secretary will make the determination of which lots will have the existing exempt status;
- (C) a lot that is ten acres or larger in size provided that the lot was in existence before June 14, 2002.
- (D) a subdivided lot that contains a primary single family residence, or other building or structure with design flows of sewage of 300 gallons per day or less, that was constructed on the lot prior to March 5, 1973, provided the following conditions are met:
 - (i) the building or structure is served by a public water supply permitted by the Secretary or a potable water supply that has been tested and has tested negative for the presence of total coliform;
 - (ii) the building or structure is served by a municipal or private wastewater treatment plant permitted by the Secretary or has a soil- based disposal system that has not failed and if the existing leachfield complies with one of the following:
 - (aa) is at least 100 feet from any property boundary created by the creation of the lot;
 - (bb) is at least 100 feet from the boundary created by an easement that allows for the installation of a replacement potable water supply or wastewater system for the exempt lot within the easement area; or
 - (cc) is less than 100 feet from the property boundary, or easement boundary, provided that a fully complying replacement area has been located on the lot, or located off the lot if there is permanent legal access to the replacement area;

Note: If the wastewater system is an outhouse or other system not requiring interior plumbing and a soil-based disposal system, the 100 feet will be measured from the location where a soil-based disposal system would likely be installed;

- (iii) The building or structure is not a seasonal dwelling; and
 - (iv) The lot was in existence before June 14, 2002.
- (E) two or more lots containing one or more existing seasonal dwellings if the lots were created by the subdivision of a single lot provided that:
- (i) any existing wastewater system and any existing potable water supply is not a failed or system or supply;
 - (ii) a request is submitted to the Secretary and a letter is issued that approves a design for replacement wastewater systems and potable water supplies that meet the technical standards of these Rules;
 - (iii) the person requesting the exemption has created a legal mechanism that insures that the existing seasonal dwellings will remain in seasonal use unless and until a permit is issued by the Secretary approving the conversion to year round use;
 - (iv) no unimproved lots of less than 10 acres in size were created without a permit as a result of the subdivision; and
 - (v) the lot was in existence before June 14, 2002.
- (F) a pre-existing lot, whether improved or unimproved, that was reconfigured before June 14, 2002 provided:
- (i) any land added to the overall subdivision had the required permit(s) or was exempt from the permitting requirements of this Subchapter before June 14, 2002;
 - (ii) no additional lots were created;
 - (iii) all of the lots were the same size or larger after the reconfiguration as they were on September 18, 1969;
 - (iv) the municipality or municipalities in which the land is located had a valid health ordinance based on Chapter 5, Subchapter 10, Part II, effective June 7, 1983 or a more recently adopted sewage ordinance approved by the Department of Environmental Conservation pursuant to Title 24 V.S.A. Chapter 102, or a valid zoning ordinance that specifically referred to such a health or sewage ordinance as the basis for regulating wastewater systems;
 - (v) a copy of the pre-existing and proposed revised lot lines is submitted to the Secretary; and

- (vi) the revised plot plan is recorded and indexed in the land records for the municipality where the lots are located.

(24) **Existing Seasonal Dwelling** – means a building or structure, such as a summer cottage, constructed or erected prior to June 1, 1970, that has not been used as a primary single family residence, and is not used for more than six months per year. This definition does not include primitive camps that are exempt under section 1-403(a)(8) of these Rules.

(25) **Failed Supply** - means

(A) a potable water supply:

- (i) that is contaminated so that it is rendered not potable;
- (ii) that is providing an insufficient quantity of water to maintain the permitted use of the building or structure or, if unpermitted, to maintain the usual and customary uses of the building or structure; or
- (iii) or where the source, treatment, or conveyance equipment used to provide potable water is broken or inadequate.

(B) Notwithstanding the provisions above, a potable water supply shall not be a failed supply if:

- (i) these effects can be and are remedied solely by a minor repair or replacement; or
- (ii) these effects have lasted for only a brief period of time, the cause of the failure has been determined to be an unusual and non-recurring event, and the supply has recovered from the state of failure. Supplies which have recurring, continuing, or seasonal failures shall be considered to be failed supplies.

(C) If a project is served by multiple potable water supplies, the failure of one supply will not require the issuance of a permit or permit amendment for any other supply that is not in a state of failure.

(26) **Failed System** - means

(A) a wastewater system that is functioning in a manner:

- (i) that allows wastewater to be exposed to the open air, pool on the surface of the ground, discharge directly to surface water, or back up into a building or structure, unless in any of these instances the approved design of the system specifically requires the system to function in such a manner;
- (ii) that results in a potable water supply being contaminated and rendered not potable; or

(iii) that presents a threat to human health.

(B) Notwithstanding the provisions above, a system shall not be a failed system if:

- (i) these effects can be and are remedied solely by a minor repair or replacement; or
- (ii) these effects have lasted for only a brief period of time, the cause of the failure has been determined to be an unusual and non-recurring event, and the system has recovered from the state of failure. Systems that have recurring, continuing, or seasonal failures shall be considered to be failed systems.

(C) If a project is served by multiple wastewater systems, the failure of one system will not require the issuance of a permit or permit amendment for any other system that is not in a state of failure.

- (27) **Filtrate Effluent** – means effluent that has been treated to reduce BOD5 and total suspended solids to 30 mg/l or less each.
- (28) **Flood Plain or Area of Special Flood Hazard** - means the land in the flood plain within a community subject to a one percent or greater chance of flooding in any given year. This is also known as the 100 flood year plain.
- (29) **Floodway** - means the channel of a river or other water course and the adjacent land areas that must be reserved in order to discharge the 100 year frequency flood without cumulatively increasing the water surface elevation more than one foot.
- (30) **Graywater** – means the wastewater from normal domestic activities such as bathing, clothes washing, food preparation, and cleaning but excluding wastewater from toilets.
- (31) **Impervious Soil or Subsoil** – means a soil layer with a percolation rate that is slower than 120 minutes per inch.
- (32) **Improved Lot** – means a lot that has a substantially completed building or structure on it, and an associated substantially completed potable water supply and wastewater system that may or not be located on the lot.
- (33) **Induced Groundwater Mounding** – means the rise in the seasonal high water table caused by the discharge of wastewater into a soil-based disposal system.
- (34) **Installer** - means a person who constructs a potable water supply and/or wastewater system serving or intended to serve a lot, building or structure, or campground. Installer does not mean the owner of an owner occupied single family residence who constructs a potable water supply and/or wastewater system to serve such residence.
- (35) **Leachfield** – means that portion of a soil-based disposal system used to discharge wastewater into the soil. Examples of leachfields include, but are not limited to: absorption trenches and beds; at grade systems; and mound systems.

- (36) **Lot** – means a tract or portion of land with defined boundaries created by the act of subdivision. A deed may describe one or more lots. Multiple lots described in a single deed remain separate lots provided that they are described as having separate and distinct boundaries and that any subsequent deed describing the lots does not eliminate the separate and distinct boundaries.
- (37) **Minimum Site Conditions** – means those naturally occurring conditions related to soil permeability, soil depth, depth to seasonal high water table, depth to bedrock and slope that must exist in order to construct any soil-based wastewater system.
- (38) **Minor Repair or Replacement** – means:
- (A) For wastewater systems, the repair or replacement of a pipe leading from a building or structure to the septic tank, replacement of a septic tank, repair or replacement of a pump and/or associated valves, switches and controls, the repair or replacement of a toilet, or any other repair or replacement that the Secretary, on a case by case basis, determines to be a minor repair or replacement.
 - (B) For potable water supplies, the repair or replacement of an individual pipe leading from a building or structure to a well, repair or replacement of a pump, repair or replacement of filters or screens, repair or replacement of a mechanical component, deepening or hydrofracturing a well, repair or replacement of a lavatory, or any other repair that the Secretary, on a case by case basis, determines to be a minor repair or replacement. Note: replacement of a distribution system, or replacement of piping related to a change in use, increase in design flow, or change in operational requirements of the water system are not normally considered minor repairs or replacements.
- (39) **Mobile Home** - means a prefabricated dwelling unit that:
- (A) is designed for long term and continuous residential occupancy;
 - (B) is designed to be moved on wheels, as a whole or in sections;
 - (C) on arrival at the site, is complete and ready for occupancy, except for incidental unpacking, assembly, connections with utilities, and placing on supports or a permanent foundation, or installation as a unit in a previously prepared structure; and
 - (D) contains the same type of water supply and waste disposal as immovable housing;
- (40) **Mobile Home Park** - means any lot of land under single or common ownership or control that contains, or is designed, laid out or adapted to accommodate, more than two mobile homes.

Nothing herein shall be construed to apply to premises used solely for the storage or display of mobile homes. Mobile home park does not mean any parcel of land under the ownership of an agricultural employer who may provide up to four mobile homes used by full-time workers or employees of the agricultural employer as a benefit or condition of employment or any parcel of land used solely on a seasonal basis for vacation or recreational mobile homes.

- (41) **Mobile Home Lot** - means an area of land within a mobile home park designated for the placement of a single mobile home and the exclusive use of its occupants.
- (42) **Municipality** - means a town, city, incorporated village or unincorporated village, or gore.
- (43) **Perched Water Table** – means a water table that forms in the upper horizons of some soils because layers with low permeability overlie layers with higher permeability. Under these Rules, a perched water table is the seasonal high water table and shall be treated as such.
- (44) **Performance Based Design** – means a design based on site specific hydrogeologic testing that demonstrates the site's ability to function in accord with these Rules.
- (45) **Person** - means any individual, partnership, company, corporation, association, unincorporated association, joint venture, trust, municipality, the state of Vermont or any agency, department or subdivision of the state, federal agency, or any other legal or commercial entity.
- (46) **Potable Water Supply** - means the source, treatment and conveyance equipment used to provide water used or intended to be used for human consumption, including drinking, washing, bathing, the preparation of food, or laundering. This definition does not include any internal piping or plumbing, except for mechanical systems, such as pump stations and storage tanks or lavatories, that are located inside a building or structure and that are integral to the operation of a potable water system. This definition also does not include a potable water supply that is subject to regulation under 10 V.S.A. Chapter 56 (Public Water Supplies).
- (47) **Pre-existing Lot** - means a lot:
 - (A) whose boundaries were in existence on September 18, 1969, and were so described in a deed recorded on or before that date;
 - (B) that has been approved by a municipality pursuant to the administration of a subdivision ordinance or bylaw prior to September 18, 1969;
 - (C) whose boundaries were described in a plan prepared by an engineer or land surveyor that was recorded in the land records of the municipality in which the land is located provided that, on the basis of the plan, one or more lots depicted thereon were conveyed or made the subject of a contract for sale prior to September 18, 1969; or

- (D) that was not of record on September 18, 1969, but which the Secretary accepted as a subdivided lot existing on that date on the basis of evidence submitted to the Secretary prior to July 1, 1970;
- (48) **Prescriptive Design** – means a wastewater system design based on at least 24" of naturally occurring, permeable soil above bedrock and the seasonal high water table, such as a traditional septic tank and leachfield design. (See enhanced prescriptive and performance based designs for alternatives to prescriptive design.)
- (49) **Primary Area** - means the area reserved for or containing the original wastewater system.
- (50) **Project** – means all lots, buildings, structures, campgrounds, potable water supplies and wastewater systems for which a particular permit application is submitted.
- (51) **Professional Engineer** - means an engineer licensed and in good standing by the Board of Professional Engineering under 26 V.S.A. Chapter 20.
- (52) **Qualified Hydrogeologist** - means a person with training or experience in bedrock geology, glacial geology and groundwater hydrology sufficient to adequately prepare the hydrogeologic studies and analyses required by these Rules.
- (53) **Replacement Area** - means the area reserved for a wastewater system that may be constructed in the event the wastewater system in the primary area fails or is removed from service.
- (54) **Seasonal High Water Table** – means the highest elevation that the water table reaches during the seasonally wet times of the year. This is determined by soil examination or groundwater level monitoring as described in the Rules.
- (55) **Secretary** - means the Secretary of the Agency or a duly authorized representative of Secretary. A duly authorized representative of the Secretary includes a municipality that has requested delegation, in writing, and has been delegated the authority to implement provisions of these Rules in lieu of the Secretary.
- (56) **Sewage** - means sanitary waste or used water from any building, including but not limited to carriage water, shower and wash water, and process wastewater. For purposes of these Rules, stormwater shall not be considered sewage.
- (57) **Single Lot Subdivision** – means subdividing a lot so that two, and not more than two, lots are created. The newly created lot and the remaining original lot, shall be both considered single lot subdivisions.

- (58) **Single or Common Ownership or Control** - means ownership or control by any person or persons and includes affiliations of individuals or entities, or both, that are formed in order to derive profit, consideration or any other beneficial interest. The following individuals and entities shall be presumed not to be affiliated for beneficial interest unless there is substantial evidence of an intent to evade the purposes of this chapter:
- (A) a stockholder in a corporation, if the stockholder and the stockholder's spouse, parents, children and siblings own, control or have a beneficial interest in less than five percent of the outstanding shares in the corporation.
 - (B) an individual in the capacity as an agent and within the normal scope of the individual's duties as a court appointed guardian, attorney, real estate broker or salesperson, engineer or land surveyor, unless compensation received or beneficial interest obtained as a result of these duties indicates more than an agency relationship.
 - (C) a seller or chartered lending institution that only provides financing for all or a part of the purchase price at rates not substantially higher than prevailing lending rates in the community and subsequently grants a partial release of the security when the buyer establishes or maintains a mobile home park.
- (59) **Soil-Based Disposal System** – means a wastewater system that depends on naturally occurring soil to absorb the effluent from the system and to transmit the wastewater away from the site without any overland flow. Soil-based disposal systems include those that have a septic tank with leachfield, an advanced treatment system with leachfield, or a spray disposal system.
- (60) **Subdivide** - means to divide land by sale, gift, lease, mortgage foreclosure, court-ordered partition or decree, or filing of a plat, plan, or deed in the town records where the act of division creates one or more lots. Subdivision shall be deemed to have occurred on the conveyance of the first lot or the filing of a plat, plan, or deed in the town records, whichever first occurs. A subdivision of land shall also be deemed to have taken place when a lot is divided by a state or municipal highway, road or right-of-way or when a lot is divided by surface waters with a drainage area of greater than ten square miles.
- (61) **Substantially completed** - means a building or structure, potable water supply, or wastewater system that is sufficiently constructed so that it can be used for its intended purpose with no further construction.
- (62) **Unimproved Lot** – means a lot that has no building or structure on the lot.
- (63) **Wastewater system** - means any piping, pumping, treatment or disposal system used for the conveyance and treatment of sanitary waste or used water, including, but not limited to, carriage water, shower and wash water, and process wastewater. This definition does not include any internal piping or plumbing, except for mechanical systems, such as pump stations

and storage tanks or toilets, that are located inside a building or structure and that are integral to the operation of a wastewater system. This definition also does not include wastewater systems that are used exclusively for the treatment and disposal of animal manure. For the purposes of these Rules, "wastewater system" refers to a soil-based disposal system of less than 6,500 gallons per day, or a sewerage connection of any size.